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AttorneysforDefendant  
BankofAmerica,N.A.

UNITEDSTATESDISTRICTCOURT  
NORTHERNDISTRICTOFCALIFORNIA

DAVIDKECK,anindividual,

Plaintiff,

vs.

BANKOFAMERICA,aDelaware  
Corporation;CENTRALSTATES  
INDEMNITYCO.OFOMAHA,aNebraska  
Corporation;CSIPROCESSING,LLC,a  
NebraskaCompany,andDOES1through100,

Defendants.

CaseNo.:CV08-1219CRB

**BANKOFAMERICA'S  
ANSWERTOSECOND  
AMENDED COMPLAINT**

BankofAmerica,N.A.("BofA")answerstheseconda mendedcomplaintasfollows:

**ResponsestoComplaint'sAllegations**

1. BofAdeniesthat"BusinessCardSecurity"("BCS")w hichwasofferedtoplaintiff DavidKeck("Keck")was"insuranceorinsurance-lik e."BofAaffirmativelyallegesthatBCSis adebtcancellationprovisionofferedtoguarantors inconnectionwithsmallbusinesscreditcard accounts.BofAadmitstheotherallegationsofpar agraph1.

2. BofAdeniesthattheBCSofferedKeckwasnamed"Pa ymentProtection."BofA furtherdeniesthatBCS"pays"anydebt,andaffirm ativelyallegesthatBCScancelsamounts otherwisepayableunderthecustomer'screditcard agreementupontheoccurrenceofcertain

1 eventssuchasdisabilityorinvoluntaryunemployme nt.BofAdeniestheremainingallegationsof  
2 paragraph2.

3 3. BofAdeniesthatitengagesinthewrongfulpractic esnamedinparagraph3and  
4 lacksknowledgeorinformationsufficienttoforma beliefaboutwhyKeckbringsthissuit,and  
5 onthatgrounddeniesthatpartofparagraph3.

6 4. BofAadmitstheallegationsofparagraph4.

7 5. BofAadmitsthatBankofAmericaCorporationisaD elawarecorporation,but  
8 deniestthatBankofAmericaCorporationhasanythin gtodowiththetransactionsonwhichKeck  
9 sues.BofAaffirmativelyallegestthatitisanati onalbankingassociationformedunderthe  
10 NationalBankActwithitsmainofficeinNorthCar olina,thatitisasubsidiaryofBankof  
11 AmericaCorporation,andthatKeckguaranteedabus inesscreditcardaccountwithBofA,not  
12 BankofAmericaCorporation.

13 6. BofAadmitsthatCentralStatesIndemnityCo.ofOm aha(“CSI”)isaNebraska  
14 corporationdoingbusinessinSanFrancisco.BofA deniestheremainingallegationsof  
15 paragraph6.

16 7. BofAadmitsthatCSIProcessing,LLC(“CSIProcessi ng”)isaNebraskalimited  
17 liabilitycompanyregisteredtodobusinessinCali fornia.BofAdeniestheremainingallegations  
18 ofparagraph7.

19 8. BofAlacksknowledgeorinformationsufficienttof ormbeliefaboutwhyKeck  
20 bringsthissuit,andonthatgrounddeniesthatpa rtofparagraph8.BofAdeniestheremaining  
21 allegationsofparagraph8.

22 9. BofAdeniestheallegationsofparagraph9.

23 10. BofAadmitstheallegationsofparagraph10.

24 11. BofAadmitsthatvenueisproperinthisCourt.Bo fAdeniestheremaining  
25 allegationsofparagraph11.

26 12. BofAadmitsthatparagraph12correctlyquotessome statementswhichappearon  
27 CSI’swebsite.BofAfurtheradmitsthat“www.csi-o maha.com/product.htm”and“www.csi-

28

1 omaha.com/sales.htm”arelinkstoCSI’swebsite.B ofAdenietherremainingallegationsof  
2 paragraph12.

3 13. BofAadmitsthatCSIProcessingisawhollyowned subsidiaryofCSIthat  
4 providesprocessingandotherservicestoBofAand itscustomersinconnectionwithBCS.BofA  
5 lacksknowledgeorinformationsufficienttoforma beliefaboutthetruthoftheremaining  
6 allegationsofparagraph13,andonthatgroundden iesthem.

7 14. BofAadmitsthatBCSisofferedtoguarantorsofit ssmallbusinesscreditcard  
8 accountsbyatelemarketerundercontractwithBofA .BofAdenietherremainingallegationsof  
9 paragraph14.

10 15. BofAlacksknowledgeorinformationsufficienttof ormabeliefaboutthetruthof  
11 theallegationsofparagraph15,andonthatground deniesthem.

12 16. BofAadmitsthatKeck’sSocialSecuritybenefitswe redirectlydepositedintothis  
13 BofAcheckingaccountinthesummerof2007.BofA lacksknowledgeorinformationsufficient  
14 toformabeliefaboutthetruthoftheremaininga llegationsofparagraph16,andonthatground  
15 deniesthem.

16 17. BofAlacksknowledgeorinformationsufficienttof ormabeliefaboutthetruthof  
17 theallegationthatKeckusedhisbusinesscreditc ardto“borrowforpersonalandhousehold  
18 expenses”andaffirmativelyallegesthatKeck’scre ditcardagreementsaidhisaccountwasa  
19 businessaccountandshouldbeusedforbusinesspu rposesonly.BofAadmitstheremaining  
20 allegationsofparagraph17.

21 18. BofAadmitsthatitmaintainssomeinformationrega rdingKeckandthatituses  
22 thatinformationforavarietyofpurposes,includi ngextendingofferstohimforgoods,servicesor  
23 provisionsmadeavailablethroughBofAoritsaffil iatesorassociatedbusinesses.BofAdenies  
24 theremainingallegationsofparagraph18.

25 19. BofAadmitsthatKeckwasofferedBCSinoneteleph onecallinoraboutJuly  
26 2007.BofAlacksknowledgeorinformationsufficie nttoformabeliefaboutthetruthofthe  
27 remainingallegationsofparagraph19,andonthat grounddeniesthem.

20. BofA admits a recording was made of one telemarketing call to Keck and admits that paragraph 20 accurately relates the gist of that call. BofA denies that it recorded that telephone call.

21. BofA admits that it believed Keck had agreed to try BCS for a free month and that he knew that unless she canceled BCS he would thereafter be charged for it. BofA admits that beginning about August 13, 2007, it charged Keck for BCS as he had not canceled by then. BofA denies the remaining allegations of paragraph 21.

22. BofA admits that it charged Keck for BCS the specific sum sonor about the dates listed in paragraph 22. BofA denies the remaining allegations of paragraph 22.

23. BofA admits that Keck complained about BCS and eventually asks that BCS be removed from his account. BofA affirmatively alleges that in response to Keck's complaints, BofA voluntarily recredited his account on December 11, 2007, the full amount he had been charged for BCS, \$334.58. BofA lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 23, and on that ground denies them.

24. BofA admits the allegations of paragraph 24.

25. BofA admits that Keck denies she agreed to purchase BCS but affirmatively alleges that he is incorrect.

26. BofA lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 26, and on that ground denies them.

27. BofA denies the allegations of paragraph 27.

28. BofA denies the allegations of paragraph 28.

29. BofA denies that any defendant was subject to the statute or regulation cited in paragraph 29 in offering BCS to business credit card guarantors. BofA lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 29, and on that ground denies them.

30. BofA admits the provisions of the statute and regulations cited in paragraph 30, but denies that they apply to any defendant in offering BCS to business credit card guarantors. BofA denies the remaining allegations of paragraph 30.

31. BofA admits the provisions of the regulations cited in paragraph 31, but denies that it applies to any defendant in offering BCS to business credit card guarantors. BofA denies the remaining allegations of paragraph 31.

32. BofA admits that BofA is a national banking association to which the statute and regulation cited in paragraph 32 do not apply. BofA denies the remaining allegations of paragraph 32.

33. BofA admits the allegations of paragraph 33 but denies that the cited regulations apply to BCS which is offered to business credit card guarantors.

34. BofA admits the allegations of paragraph 34 but denies that the cited regulations apply to BCS which is offered to business credit card guarantors.

35. BofA admits the allegations of paragraph 35 but denies that the cited regulations apply to BCS which is offered to business credit card guarantors.

36. BofA admits the allegations of paragraph 36 but denies that the cited regulation applies to BCS which is offered to business credit card guarantors.

37. BofA denies that any class may or should be certified in this action. BofA lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 37, and on that ground denies them.

38. BofA admits that it prepared a script for a telemarketer to use in offering BCS to business credit card guarantors. BofA denies the remaining allegations of paragraph 38.

39. BofA denies the allegations of paragraph 39.

40. BofA admits the allegations of paragraph 40.

41. BofA denies the allegations of paragraph 41.

42. BofA denies the allegations of paragraph 42.

43. BofA denies the allegations of paragraph 43.

44. Answering paragraph 44, BofA incorporates by reference its responses to paragraphs 1 through 43 above.

1 45. BofA admits the allegations of the first sentence of paragraph 45. BofA denies that  
2 it has violated the UCL. BofA admits the remaining allegations of paragraph 45's second  
3 sentence.

4 46-53. BofA denies the allegations of paragraphs 46 through 53.

5 54. BofA admits Keck seeks the relief alleged in paragraph 54 but denies that the or  
6 putative class members are entitled to it.

7 55. BofA denies the allegations of paragraph 55.

8 56. Answering paragraph 56, BofA incorporates by reference its responses to  
9 paragraphs 1 through 43 above.

10 57. BofA admits the allegations of paragraph 57.

11 58-60. BofA denies the allegations of paragraphs 58 through 60.

12 61. Answering paragraph 61, BofA incorporates by reference its responses to  
13 paragraphs 1 through 43 above.

14 62-63. BofA denies the allegations of paragraphs 62 and 63.

15 64. BofA admits the allegations of paragraph 64.

16 65-69. BofA denies the allegations of paragraphs 65 through 69.

17 70. Answering paragraph 70, BofA incorporates by reference its responses to  
18 paragraphs 1 through 69 above.

19 71. BofA admits the allegations of paragraph 71.

20 72. BofA admits the provisions of the statute cited in paragraph 72. BofA denies the  
21 remaining allegations of paragraph 72.

22 73-75. BofA denies the allegations of paragraphs 73 through 75.

23 76. Answering paragraph 76, BofA incorporates by reference its responses to  
24 paragraphs 1 through 75 above.

25 77. BofA denies the allegations of paragraph 77.

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**Affirmative Defenses**

78. The statutes and regulations cited in paragraphs 29 - 36 of the complaint do not apply to any of the defendants in the transactions at issue in this case because BCS is offered for business, not personal, family or household use.

79. BofA cannot be held vicariously liable under the UCL for the wrongful conduct of others, including the other defendants.

80. At BofA's direction CSIP Processing, in its role as administrator of the BCS program, sent Keck and sent each customer who enrolls for BCS, a fulfillment package that includes (1) a full explanation of BCS terms and conditions, and (2) a written acknowledgement form that requests the customer to sign and return it in an enclosed self-addressed stamped envelope thereby providing the customer's written agreement to accept BCS.

81. Keck consented to and authorized the recording of the telemarketing call transcribed in paragraph 20.

82. The CLRA does not apply to the transactions alleged in the complaint because (a) the transactions involve the extension of credit only, and (b) the transactions were for business, not personal, family or household use.

83. On December 11, 2007, BofA refunded to Keck the amounts it had charged him for BCS.

WHEREFORE, BofA prays for judgment as follows:

1. That Keck's action and complaint be dismissed with prejudice.
2. That BofA be awarded its costs of suit.
3. That the Court award such other and further relief as it finds just and proper.

DATED: May 15, 2008

SEVERSON & WERSON  
A Professional Corporation

By: /s/Jan T. Chilton  
Jan T. Chilton  
Attorneys for Defendant  
Bank of America, N.A.